1946 File No. C Local Bds 1/46

Legal Dept

A BRANCH

Subject:- Opinions under the Bombay Local Boards Act 1923

2-27/4

File No. C Local Bds. 1/46

Gen. Dte.

43-A

C O N T E N T S.

Legal Department File No. O. Local Boards 1946.
-to- 1946.

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SSM / 10/7/56.

Office of the R.L.A.

To levy an increased cess at the rate not exceeding two annas under section 93(1) of the Bombay Local Boards Act, 1923 what is necessary is that the district local board should pass a resolution at a special meeting and apply to Government in pursuance of that resolution. In the present case the Committee of Management of the District Local Board, Panch Mahals has not passed a resolution at a special meeting, nor has it so applied to Government. Consequently it would not be legally feasible for Government to levy an increased cess on the strength of the resolution of the Board dated 5th September 1945, leaving it to Government to act on its previous resolution No. 102, dated 29th March 1943 which recommended an increase of the cess from one anna to two annas. Moreover that resolution of 1943 has spent itself since in pursuance of it Government increased the cess from one anna to 1 ½ annas. The view taken by the Commissioner, N.D. in his endorsement at page 1 ante is not correct.

Remembrancer of Legal Affairs.

U.R. to G.D., No. 29~~6~~ A , dated the 9th January 1946.

Office of the R.L.A.

The Bombay Primary Education and Local Boards (Amendment) Act, 1945 having no retrospective effect comes into operation with effect from 10th January 1946. Consequently it would not be competent for Government to levy the increased cess of two annas on every rupee of every sum which became payable to Government on 1st August 1945. The increased cess would however be leviable on every rupee of every sum which became payable on 10th January 1946 or would thereafter become payable to Government. The attention of G.D. is invited to the R.L.A.'s opinion No. 5781 dated 4th August 1945 where a similar point is considered.

Remembrancer of Legal ~~Eff~~ Affairs.

U.R. to R.D. No. 348 dated the 15th January, 1946.

SSM / 9/7/56.

Office of the R.L.A.

By Government Circular (Finance Department, Supply) No. 605/VIII-B, dated the 17th July 1944, Government has decided that the District Price and Supply Advisory Committee should consist of the President of the District Local Board and others. The question referred to the R.L.A.for consideration is whether the President of the District Local Board would be entitled to the travelling allownace under rule 4 of the Bombay Local Boards Travelling Allowance Rules, 1936, for attending a meeting of the District Price and Supply Advisory Committee.

2. Clause (e) of rule 4 of the Bombay Local Boards Travelling Allowance Rules, 1936, provide:

"Travelling allowance may be allowed to an official or a member for a journey undertaken by him in the interest of the Board for attendin a meeting of the Committee which is appointed by the Government of Bombay and of which he is appointed as a representative of the Board."

What is necessary under this provision is that (i) the journey undertaken must be in the interest of the Board, (ii) the Committee for attending which the member has undertaken the journey must have been appointed by Government and (iii) he must have been appointed by Government as representative of the Board. The District Price and Supply Advisory Committee being in the interest of the people, must be deemed to be in the interest of the Board (Cf. clause (n) of section 50 of the Bombay Local Boards Act, 1923). The Committee is appointed by Government and the President of the District

~~of the District~~ Local Board is also appointed thereon by Government presumably as representative of the Board. Since all the requirements (i), (ii), and (iii) are complied with, there appears no legal objection to the President claiming his travelling allowance under rule 4 of the Bombay Local Boards Travelling Allowance Rules, 1936, for the journey undertaken by him to attend a meeting of the District Price and Supply Advisory Committee.

R.T.K.

For Remembrancer of Legal Affairs.

U.R. to G.D. No. 748, dated the 28th January 1946.

SSM / 9/7/56.

are recovered through Government agency. Under sec. 5 of the Bombay Ferries Act, 1868, read with sec. 2A thereof, it shall be lawful for a district local board to lease any public ferry by public auction or private contract, on such conditions as the District Local Board deems advisable. In the last sentence of that section it is stated that any pecuniary forfeiture for breach of contract or conditions of sale by public auction, as the case may be, may be enforced in the same manner as a demand for the land revenue under the law for time being in force, so far as practicable." It is presumed that the recovery of ferry dues through the Govt. agency is made in virtue of the provisions of sec. 5 of the Bombay Ferries Act. Whether the recovery of ferry dues with interest thereon, if any, is made by the Dist. Local Board or through the Govt. agency, the legal position as explained in R.L.A's opinion No. 2376 dated 27th March 1945 remains the same i.e. interest on over due instalments of contract of ferries vests in the District Local Board, under clause (e) of sec. 75 of the Bombay Local Boards Act.

3. The Orders in G.R. R.D. No. 7799/28, 1st March 1935, referred to in G.R.R.D.No. 9689/27 dated the 24th Septr. 1936 appears to derive its authority from section 93(d) of the Bombay Local Boards Act, 1923, read with schedule A. Section 93 imposes an obligation upon the provincial Government to levy cess at a certain rate on behalf of a Dist. Local Board on every rupee of land revenue and specifically excludes levying of cess on interest payable on land renenue on default. The said provision

~~The said provision~~ obviously would not empower Govt. to apporpriate interest on instalments of ferry dues to the provincial revenues, because the ferry dues do not vest in and belong to Provincial Government in these cases where ferries are vested in a District Local Board.

I agree and suggest the following reply:-

The R.L.A. in his opinion No. 3716, dated 24-5-1944 has explained that the liablity for interest in such cases arises under the Contract, and not under sec. 148 of the Bombay Land Revenue Code. He has, moreover, pointed out in his opinion No. 2376, dated 27-3-1945 that because a stipulation forpayment of interest upon arrears is an ordinary incident of a tenancy in this country, and as a rule it attaches to a tenancy, a landlord is entitled to enforce his claim for arrears of rent and interest thereon under sec. 108(1) of the Transfer of Property Act, and has remarked that the District Local Board, Ratnagiri, is entitled to interest on over-due instalments of ferry Contracts under cl. (e) of sec. 75 of the Bombay Local Boards Act, 1923. That ~~is~~ being the legal position it is immaterial how the interest on over-due instalments of ferry Contracts is actually recovered. The District Local Board, Ratnagiri is entitled to the interest in question even if it is recovered through Government agency.

Therefore the view taken by the Commr. S.D. is correct.

A.K.Khan , 9/4/46,

U.R. to P.W.D. No. 2906, dated, 17/4/46.

Office of the R.L.A.

The office building of the District Local Board, Broach, must be deemed to be an area subject to the authority of the District Local Board although situate within the limits of the Broach City Municipality. The expenditure of Rs. 300 incurred by the District Local Board in connection with the unveiling ceremony of the portrait of one of its former Presidents at its office would, it seems, be covered by section 50(0) rather than section 77 of the Bombay Local Boards Act, 1923.

Remembrancer of Legal Affairs.

U.R. to G.D., No. 3073, dated the 24th April 1946.

SSM / 9/7/56.

Office of the R.L.A.

H.M. (H. & R.) has in contemplation a scheme to rationalise road transport services by bringing them under the management of Local Boards and other Local Authorities. The Provincial Motor Transport Controller, Bombay, considers that in order to achieve the object clause (m) of section 50 of the Bombay Local Boards Act, 1923, would have to be amended. The G.D. has referred the papers to the R.L.A. for opinion whether the view taken by the Provincial Motor Transport Controller, Bombay, is correct.

2. It is no doubt true that clause (m) or section 50 of the Bombay Local Boards Act does not empower the Local Boards to operate bus services within their local areas. But it may be pointed out that undere clause (n) of section 50, it is competent to the Local Board to provide out of its funds formeasures likely to promote the comfort or convenience of the public within its own local areas. The running of a bus service is doubtless a measure which is likely to promote the comfort and convenience of the public. Further as observed in the linked case, under sub-section (1) of section 46 of the Bombay Local Boards Act, District Local Boards can collaborate with any local authority to run a joint bus service by appointing a joint committee for the purpose and delegateing to its the necessary powers for running the joint concern. In the circumstances it does not appear necessary to amend clause (m) of section 50 for achieving the object in view.

U.R. to G.D. No. 4508, dated the 26th June 1946. Remembrancer of Legal Affairs.

The questionsr raised for the consideration of the Remembrancer of Legal Affairs are :- (1) Whether under the provisions of section 50(n) of the Bombay Local Boards Act, 1923, district local Boards can undertake to run a bus service, and (2) whether under the provisions of section 46(1) of the said Act, district local board can collaborate with any local body to run a joint bus service by appointing a joint committee for the purpose and delegating to it the necessary powers for running the joint concern.

The obligatory duties of local boards have been enumerated in clauses (a) to (h) of section 50 of the Bombay Local Boards Act, 1923, while their discretionary powers have been specified in clauses (i) to (o) of the said section.

According to clause (n) of the said section local boards may at their discretion provide out of the local fund at their disposal for "any other local works or measures likely to promote the health, safety, comfort or convenience of the public. Running a bus service is doubtless a measure which is likely to promote convenience of the public. Therefore under this clause a local board may, at its discretion, provide out of the local fund at its disposal for running such a bus service within its own local area.

Section 46(1) of the said Act authorises a district local board from time to time to concur with any other district local board or with any municipality or cantonment authority or with more than one such local board, municipality or authority (a) in appointing out of their respective bodies a joint committee for any purpose in

purpose in which they are jointly interested, and in appointing a chairman of such committee, (b) in delegating to any such committee power to frame terms binding on each body as to the construction and future maintenance of any joint work and any power which might be exercised by either or any of such bodies, and (c) in framing and modifying rules forregulating the proceedings of any such committee and the conduct of correspondence, relating to the purpose forw-which the committee is appointed.

In view of these provisions of section 46(1) of the Act, it is obvious that district local boards can collaborate with any local body to run a joint bus service b y appointing a joint committee for the purpose and delegating to it the necessary powers for running the joint concern.

P.N.M.

Remembrancer of Legal Affairs.

U.R. to J.D. No. 4587, dated the 26th June 1946.

SSM / 9/7/566

Office of the R.L.A.

Seen and returned. The view expressed by the Commissioner, Northern Division, in para. 2 of his letter No. L.F. dated 21st May 1946 is correct. (cf. R.L.A's opinion No. 7253 dated 26th September 1938).

Remembrancer of Legal Affairs.

U.R. to G.D. No. 5300 , dated the 29th July 1946.

SSM /9/7/56.

Office of the R.L.A.

By G.R. (R.D.) No. 6111, dated 17th Oct. 1881 Government ordered as follows:-

"The Act (the Bombay Local Funds Act, 1869) requires that the Local Fund cess shall be 6 1/4 per cent of the full survey settlement, but if the accounts furnished by the Inamdars are trustworthy, the average collections of the ten years ending 1877-78 (Rs. 8,528) are only a little over 28 per cent of the kamal (Rs. 30,224) Under these circumstances Government direct that as an act of grace the Local Funds should be levied from the current year on the average collections above specified, but the cess should be increased by 5 per cent every five years until the full rates are reached.

On a proposal made by the Administrator District Local Board, Panch Mahals for the increase of the local fund cess Government by their G.R. (G.D.) No. 9560, dated 14th Sept. 1944 directed that a cess of one anna and six pies should be levied in the Panch Mahals sub-division of the Broach and Panch Mahals District, with effect from the 1st August 1944 on every rupee of land revenue as prescribed in section 93(1) of the Bombay Local Boards Act, 1923. On these facts, R.D. has raised the following questions:-

(1) whether the orders contained in G.R. No 6111, dated 17th October 1881 should be withdrawn; and

(ii) whether the local fund cess for the year 1944-45 be levied at the old rate or at the revised rate sanctioned in G.R. (G.D.) No. 9560, dated 14th September 1944.

R.D. observes:

"Regarding (i) the proceedings underlying the G.R. of 17th October 1881 show that the local fund cess was directed to be levied initially on the average of ten years collections ending 1877-78 to be raised by 5 per cent. Every five years till the full rates are reached, as the collections then realised by the Inamdars were only 28 p. c. of the Kamal Akar. The Collector's letter of 5th December 1945 shows that the circumstances which warranted the grant of the concession no longer exist as the Inamdars' revenue realisations are not only equal but are in certain cases even in excess of it. Apart from this the levy of L.F. cess in alienated villages is governed by section 94 read with section 93 of the Bombay Local Boards Act, 1923. The provisions of section 94 are mandatory and do not allow any latitude for being relaxed as regards the rate of L.F. cess leviable. The executive orders issued in the G.R. of 17th October 1881 are accordingly inconsistent with the provisions of section 94 of the Bombay Local Boards Act, 1923. In view of these reasons the orders issued in the G.R. may be cancelled with retrospective effect from the date from which section 94 of the Local Boards Act, 1923 came into force

The R.L.A. is requested to state whether the proposed action will be legally in order.

2. "In enacting that they 'may' or 'shall they think fit' or 'shall have power' or that 'it shall be lawful' for them to do such acts, a statute appears to use the language of mere permission. Those expressions seem divested of that compulsory force and probably that is the prima facie meaning."
(see Maxwell p. 211)

Section 6 of the Bombay Local Funds Act, 1869 provided that "it whall be lawful for Government to levy" one anna cess on every rupee of land revenue for the purposes of the Act. It is therefore clear that Government was vested with discretion to show concession in respect of the levy of the cess in certain deserving cases and consequently the G.R. of 17th October 1881 was intra vires the provisions of section 6 of the Bombay Local Funds Act, 1869; but that Act of 1869 was repealed by section 2 of the Bombay Local Boards Act, 1923. The G.R. of 17th October 1881 would however have survived the repeal of the Bombay Local Funds Act, 1869 if that G.R. had been consistent with the provisions of the Bombay Local Boards Act, 1923. ~~The G.R. of 17th October 1881 would however have survived the~~ (see para. 3 of sub-section (4) of section 4 of the Bombay Local Boards Act, 1923). But the provisions of sections 93(1) and 94 of the Bombay Local Boards Act, 1923 are mandatory and it is obligatory on Government to levy the cess as provided therein. Consequently immediately on the coming into force of the Bombay Local Boards Act, 1923 the G.R. of 17th October 1881 became innefective and the concession granted thereunder was deemed withdrawn. It follows therefore that it would not be necessary to cancel the G.R. of

17th October 1881 became ~~inffe~~ ineffective and the concession granted tereunder was deemed withdrawn. It follows therefore that it would not be necessary to cancel the G.R. of 17th October 1881 with any retrospective effect and it would be not only competent but also necessary for Government to levy the cess at the revised rate for the year 1944-45.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 5812, dated the 22nd August 1946

SSH / 9/7/56.

No. L. 3-2916
Office of the Accountant General,

Queens Road,

Bombay. 27 Dec., 1946

From

THE ACCOUNTANT GENERAL,

BOMBAY,

To

The Secretary to Government,

General Department, Bombay.

Subject:- District Local Board, Thana:
Expenditure incurred on a
ceremony.

Sir,

With reference to Government, General Department, endorsement No. S. 172/26897-C, dated 13th December 1946 requesting the Examiner, Local Fund Accountsants, not to raise any objection in audit to the irregular expenditure incurred by the District Local Board, Thana in connection with the ceremony of laying the foundation stone of the Maternity Home at Murbad, I have the honour to state that under Section 9(a) of the Local Fund Accounts, to include in his Audit Report all payments which are contrary to law, and after considering the replies of the local bodies to his objections, he should, under Section 10(3) of the Local Fund Audit Act, recommend to the Commissioner the charging or surcharging of any irregular payments. Under Section 11 of the Act, the Commissioner and not the Examiner, Local Fund Accounts, is the final authority to order or waive the recovery in question. Under the existing law, therefore, it is the Commissioner, Northeren Division and not the Examiner, Local Fund Accountsants, who has the power or discretion to waive the recovery of the payment.payment. If Government so desire the Remembrancer of Legal Affairs may also be consulted. In this connection a reference is invited to this office un-official No. L.2/7- 1448, dated the 26th March 1945.

* Audit Act it is obligatory for the Examiner, Local Fund

Yours obedient servant,

Sd. B.C.Dutt,
Accountant General.

No. L.3-2916-A, dated 27 Dec., 1946.

Copy together with copy of General Departments No. S-172/26989-C, dated 13th Dec. 1946, forwarded to the Secretary to Government, Legal Deptt., Bombay.

Accontant General.

No. S-172/26987-C,
General Department,
Bombay Castle, 13th December 194

To

The Collector of Thana.

Subject:- Interpretation of
section 50(0) of the-

I am directed to invite your attention to letter No. Gen/1087, dated the 29th October 1946, from the President, District Local Board, Thana, addressed to the Minister for Local Self Government which has been forwarded through your.

2. Section 50(0) of the Bombay Local Boards Act, 1923 requires the previous concurrence of the Collector before the expenditure in question can be debited to the Local Fund. Acts which are abinitio void or ultra vires cannot be ratified by a subsequent ratification of the defects. It is, therefore, not possible to accord sanction to the expenditure already incurred. The Examiner, Local Fund Accounts is, however, being asked not to raise any objection in audit to the expenditure already incurred. Please inform the President, District Local Board, Thana, accordingly.

E. B. Patell,

Under Secretary to the Government of

Bombay, General Department.

No. S-172/26897-C,

General Department,

Bombay Castle, 13th Dec., 1946.

Copy, with a copy of the letter to which it is a reply (with accompaniment), forwarded to :- The Commissioner, Northern Division,
The Examiner, Local Fund Accounts,

2. The Examiner, Local Fund Accounts is requested not to raise any objection in audit to the expenditure in question.

By order of the Governor of Bombay,

Sd/-
for Under Secretary to the Government of
Bombay. Genreal Department.

No. Gen/917 of 1946-4
District Local Board Office.
Thana, 26th June 1946.

From

The President,
District Local Board, Thana.

To

The Collector, District Thana.

Subject:- Sanction under section 50(0) of the Local Board's Act, 1923.

Sir,

In enclosing herewith for your information copy of General Board's Resolution No. 9 of 24-6-46, I have the honour to state that you were aware that the ceremony of laying the foundation stone of the Maternity Home at Murbad was performed on 30-5-46 under the auspices of Dr. M.D.D. Gilder, Minister of Public Health and that for this function invitations to distinguished persons of the district including Govt. Officers had to be sent. The cost of postage on this account has come ~~had to be sent. The cost of~~ to Rs. 11-11-6 and as invitations form part of the ceremonial, the Board has resolved to debit this expenditure to the Local Fund, with your previous permission under section 50(0) for so doing. I, therefore, requet you to grant this permission.

Your obedient servant,

Sd./-

for President,
District Local Board, Thana.

True Translation.

General Board Resolution No. 9 of 24-6-1946.

Subject No. 9 P- The ceremony of laying the foundation stone of the Maternity Home to be newly constructed at Murbad at the hands of Dr. Gilder, Minister of Public Health was performed on 30-5-1946 under the auspices of the joint institutions of the District Local Board, Thana and the Murbad Taluka Maternity Home Committee. A sum amounting to Rs. 11-11-6 has been spent on account of postage for dispatch of invitations in that connection. Hence to consider the ~~quest~~ question of incurring that expenditure with the concurrence of the Collector, Thana.

Resolution No. 9:- The said amount be expended with the sanction of the Collector.

Sd. V.V. Dandekar,
President,
District Local Board, Thana.

No. L.S.G.S.R.505,
Thana, 19th September 1946.

~~To~~

~~The President, District Local Board, Thana.~~

To

The President, District Local Board, Thana

Sub: Sanction under Sec. 50(0) of the Dist. Local Bd. Act 1923.

Sir,

Reference your No. Gen/917, dated 26-6-46 Post Factosanction is not permissible under law as previous sanction is the essential condition. It is therefore regretted that the sanction cannot be granted.

Yours obedient servant,

Sd./-

For Collector, Thana.

SSM / 9/7/56.

No. Gen/1029 of 1946-47,
District Local Board Office,
Thana, 28-9-46.

From

The President,
District Local Board,
Thana.

To

The Collector, Thana.

Subject:- Sanction under Section 50(0) of the District Local Board Act 1923.

Sir,

With reference to your No. L.S.G.S.R.505, of the 19th inst. I have the honnur to inform you that since the Board has clearly resolved to debit the expense of Rs. 11-11-6 to the Local Fund with your previous sanction thereto, the transaction of debit has remained to be put through pending receipt of your sanction the expenditure in question having been for the present met from private source. You will therefore now expendite the grant of sanction asked for.

Your obedient servant,

Sd/-
for President,
District Local Board, Thana.

No. L.S.G.S.R. 505,
Thana, 9th October 1946.

To

The President, District Local Board, Thana.

Subject:- Sanction under Section 50(0) of the District Local Board, Act, 1923.

Sir,

Reference your No. Gen/1029, dated 28-9-46. I have the hounour to inform you that section 50(0) of the Local Board Act contemplates previous concurrence of the Collector to the expenditure for public reception ceremony etc. before the function actually takes place. Your presumption that expenditure on the said account can be debited to the funds of the Board with the sanction of the Collector after the function takes place is not correct.

In view of the fact stated above I regret I am unable to accord sanction as requested by you as the function has already taken place.

Your obedient servant,
Sd./-
for Collector, Thana.

No. Gen/1085 of 1946-47.
District Local Board Office.
Thana, 21st October 1946.

From

V.V.Dandekar, Esquire,
B.A.,LL.B., M.L.C.,
President, District Local Board, Thana.

Sir,

The Minister for Local Self-Government,
Government of Bom ay, Secretariat, Bombay

Subject:- Interpretation of section 50(0) of the Bombay Local Boards Act, 1923.

Sir,

I have the honour to enclose herewith for favour of your perusal the marginally noted references and to state that the ceremonial of laying the foundation stone of the Maternity Home at Murbad was performed under the auspices of Dr. M.D.D. Gilder, the Minister of Public Health on 30-5-1946. The Public function was sponsored by the Local committee and the Board and most of the details of the performance were arranged by the Local Maternity Home Committee. But with a view to ensure a respectable measure of public attendance on the occassion of the Minister's visit to Murbad on public account, the work of issuing out invitations for the prupose was left to me by the local committee. I had to spend a sum of Rs. 11-11-6 on that score; but knowing that Section 50(0) of the Act required previous concurrance of the Collector to be obtained before debiting this expense against the Local Fund, I approached the Board for its resolution as soon as it met for the first time after the function in question applied to the Collector of Thana forwarding to him the copy of Board's resolution in the matter for grant of his permission to allow the Board to incur the expenditure on postage out of its local fund as contemplated by Section 50(0) of the Act. The rest of the development may be easily gleaned from the correspondence on the subject. The Collector of Thana appears to hold that the section 50(0) has to be taken to mean that the concurrance of the Collector to be sought for the purposes of this section has necessarily to precede the actual taking place of the function and sticking to his criterion of interpretation, pleads inability to accord sanction asked for. The phraselogy employed in the statutory provisions is too plain to be misunderstood." With the previous concurrance of the Collector" means if anything that the concurrance of the Collector has to be previous to the exercise of its discretion by the Board to defray part of the Local fund on account of any public reception, ceremony etc. The section does not contemplate fulfillment of any other extraneous antecedents. In the circumstances I request you to be good enough to give your ruling in the matter.

This office No. Gen/917 of 26-7-1946 Collector of Thana's reply Nol L.S.G.S.R. 505 of 19-9-1946.
This office No. Gen /917 of 28-9-1946 Collector of Thana's reply No. L.S.G.S.R. 505 of 9-10-1946.

~~Your obedient servant,~~

~~-s-s/-~~

Your obediant servant,

Sd./- V.V.Dandekar,
President,
District Local Board, Thana.

Through and with compliments to the Collector and the Commissioner, N.D. Ahmedabad (with 2 spare copies).

SSM / 10/7/56.